158, noted in 16 COLUM. L. REV. 682; *Midgett v. Eastern Carolina Transport Co.*, 180 N. C. 71, noted in 34 HARV. L. REV. 326. Where the failure of the passenger to accompany the baggage is due to the fault of the carrier, or where the carrier expressly or impliedly consents that it go upon a different train, the common law liability attaches. *Wald v. Pittsburg, Cinn., Chicago & St. Louis Ry.*, 162 Ill. 545; *Toledo, St. Louis & Kansas City Ry. Co. v. Tapp*, 6 Ind. App. 304; *Warner v. Burlington & Mo. River R. R.*, 22 Iowa 166; *Adger v. Blue Ridge Ry.*, 71 S. C. 213. For a full discussion of the merits of the modern view, see 9 MICH. L. REV. 707.

CARRIERS—LIMITATION OF LIABILITY UNDER CUMMINS AMENDMENT.—Contract made by shipper of horses provided that he should assume certain obligations of care with reference to the stock en route, and released the express company "from liability for any delay, injury or loss from any cause whatever, unless caused by the company or by the negligence of its agents or employees." Failing to prove that death of a horse was caused by employee's negligence, the shipper contended that the provisions of a contract limiting liability are inoperative under the Cummins Amendment. *Held*, contract valid. *Chaimson v. American Railway Express Co.* (Wis., 1922), 189 N. W. 529.

The effect of the shipper's contention would be to make the carrier an absolute insurer, and, as stated in the instant case, this was clearly not intended by the Cummins Amendment. The qualifying words "caused by it" prevent such an interpretation, especially in view of the construction placed upon that phrase as used in the Carmack Amendment. *Adams Exp. Co. v. Croninger*, 226 U. S. 491. Thus, while the carrier is liable for "full actual loss" caused by it, *C., M. & St. P. Ry. Co. v. McCaull-Dinsmore Co.*, 253 U. S. 97, it may by contract limit that liability to cases where it has been negligent. Previous decisions have held that the shipper may assume the risks of care of the stock and relieve the carrier of all obligations in that respect, *Purity Farms v. Adams Exp. Co.*, 95 N. J. Law 134; and that, if an attendant accompanies the stock under such a contract, the shipper has the burden of proof where negligence is in issue. *Lane v. O. S. L. Ry. Co.*, 34 Ida. 37, 15 A. L. R. 197. The contract in the principal case goes even further in the direction of relieving the carrier of liability for losses of livestock, but the decision is apparently not in conflict with the provisions of the Cummins Amendment or public policy. *Ruebel Bros. v. American Express Co.*, 190 Iowa 600.

CARRIERS OF PASSENGERS—INVITATION TO BOARD TRAIN.—The plaintiff presented herself at defendant's station and purchased a ticket for a train then due. She saw a passenger train stop at substantially the time and place for the train she expected, and, no warning being given, she promptly started to board it, when it started without signal, causing her to be thrown off the steps and injured. This train, although not scheduled to stop, did so in compliance with a danger signal. Verdict for plaintiff, and defendant excepts. *Held*, the facts justify a finding that the plaintiff was a passenger and that there was negligence in starting the train without giving her oppor-

tunity to reach a place of safety; but the exceptions are sustained on the ground that the court should not have said as a matter of law that there was an implied invitation to board the train, for such was a question of fact for the jury. *Mary McPartland v. Boston, Revere Beach & Lynn Railroad* (Mass., 1922), 136 N. E. 168.

"Passengers are persons who present themselves for the purpose of being carried and who are accepted by the carrier." GODDARD'S OUTLINES OF THE LAW OF BAILMENTS AND CARRIERS, Sec. 319; *Illinois Central Railroad Co. v. O'Keefe,* 168 Ill. 115. The relationship may be implied from the act of putting oneself in the carrier's control, *Webster v. Fitchburg Railroad Co.,* 161 Mass. 298; and knowledge by the carrier of the traveller's presence and intention is unnecessary. *Carpenter v. Boston & Albany Railroad Co.,* 97 N. Y. 494. But the relation may be terminated by act of the passenger. *Dodge v. Boston & Bangor Steamship Co.,* 148 Mass. 207. A traveller may be a passenger while mounting the train steps. *Payne v. Allen* (Ga.), 110 S. E. 345; *Riley v. Southern Pacific Co.* (Cal., 1922), 207 Pac. 699. So bringing a street car to a stop, *Philadelphia Rapid Transit Co. v. Alcorn,* 266 Fed. 50, or almost to a stop, *Nilson v. Oakland Traction Co.,* 10 Cal. App. 103, at a usual place, *Spencer v. St. Louis Transit Co.,* 111 Mo. App. 653, or upon signal, is an implied invitation to take passage; and attempting to do so is an acceptance constituting one a passenger even before reaching the car. *Citizens' Railroad Co. v. Farley,* 136 S. W. 94. However, Massachusetts has held otherwise when one has not actually reached the car. *Duchemin v. Boston Elevated Railway Co.,* 186 Mass. 353. When one through mistake boards a car on its way to the barn she is a passenger, although notified to alight. *McIlwaine v. Tacoma Railway & Power Co.,* 72 Wash. 184. Carriers are required to exercise diligence "as far as human care and foresight will go." *Warren v. Fitchburg Railroad Co.,* 8 Allen (Mass.) 227; *Thomas v. Monongahela Valley Traction Co.* (W. Va., 1922), 112 S. E. 228. They must take timely precautions to prevent travellers taking the wrong train. *Marshall v. St. Louis, Kansas City & Northern Railway Co.,* 78 Mo. 610. And if through their fault the passenger takes an improper train, his expulsion would be wrongful. *Elliot v. New York Central & H. R. R. Co.,* 6 N. Y. Supp. 363. It is negligent to start a train from a station while a passenger is getting on, regardless of the length of the stop. *Texas & P. Ry. Co. v. Gardner,* 114 Fed. 186. Furthermore, the carrier must give warning of the departure of trains. *Andrist v. Union Pacific Railroad Co.,* 30 Fed. 345. In some instances especial protection has been given to women travellers. *Garricott v. New York State Railways,* 223 N. Y. 9. But the passenger must not be contributively negligent. *Railroad Co. v. Aspell,* 23 Pa. St. 147. In the case at hand it was undoubtedly in accordance with the law for the court to say that the facts warranted a finding that the plaintiff was a passenger and the defendant was negligent. But having those facts established, it is not clear why the court should insist upon the matter of an implied invitation being submitted to the jury, for it would seem that that question is of significance only in determining whether a carrier-passenger relation had been created.